

ADAM LEVIN (SBN 156773)
axl@msk.com
SARAH WIRTZ (SBN 217434)
stw@msk.com
MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
Los Angeles, California 90064-1683
Telephone: (310) 312-2000
Facsimile: (310) 312-3100

*Attorneys for Defendants Metro- Goldwyn-Mayer Pictures Inc.
and Paramount Pictures Corporation*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

AMERICAN FEDERATION OF
MUSICIANS OF THE UNITED
STATES AND CANADA,

Plaintiff,

v.

METRO-GOLDWYN-MAYER
PICTURES INC. and
PARAMOUNT PICTURES
CORPORATION,

Defendants.

CASE NO. 2:17-cv-2704-GW(MRWx)

**DEFENDANTS' APPENDIX OF
DISCOVERY IN DISPUTE IN
SUPPORT OF MOTION TO
COMPEL (1) DISCOVERY
RELATING TO DISCIPLINE
OF MUSICIAN WITNESSES;
(2) RESPONSES TO
INTERROGATORIES
REGARDING AFM'S
CONTENTIONS; (3) A RULE
30(B)(6) DEPOSITION DATE;
(4) DATE CERTAIN FOR
DOCUMENT PRODUCTION; AND
(5) PRIVILEGE LOG**

Date: February 14, 2018
Time: 9:30 a.m.
Dept.: Courtroom 550, Roybal
Federal Building

Discovery Cutoff: March 9, 2018
Pretrial Conference: June 21, 2018
Jury Trial: July 10, 2018

Judge: Magistrate Judge
Michael R. Wilner

DEFENDANTS' APPENDIX OF DISCOVERY IN DISPUTE

Defendants Metro-Goldwyn-Mayer Pictures Inc. ("MGM") and Paramount Pictures Corporation ("Paramount") (collectively "Defendants") submit the following appendix of discovery in dispute in support of Defendants' concurrently filed Motion To Compel (1) Discovery Relating To Discipline Of Musician Witnesses; (2) Responses To Interrogatories Regarding AFM's Contentions; (3) A Rule 30(b)(6) Deposition Date; (4) Date Certain For Document Production; and (5) Privilege Log.

I. REQUESTS RE AFM'S DISCIPLINE OF MUSICIAN WITNESSES

A. MGM'S INTERROGATORY TO AFM RE DISCIPLINE

(1) MGM's Interrogatory No. 10¹

IDENTIFY all facts supporting YOUR contention, if any, that any PERSON who provided services in connection with the production or scoring of BEN HUR violated an AFM by-law, rule or policy.

AFM's Response to Interrogatory No. 10:²

AFM objects to this Interrogatory on the grounds that, by propounding this discovery request, MGM and its counsel have engaged in an unlawful unfair labor practice in violation of Section 8(a)(1) of the National Labor Relations Act. *United Nurses Ass'ns of Cal./Union of Health Care Professionals, NUHHCE, AFSCME v. NLRB*, 871 F.3d 767, 785-88 (9th Cir. 2017).

AFM objects to this Interrogatory to the extent that it seeks information that is irrelevant to the claims made in this case.

AFM objects to this Interrogatory to the extent it calls for information protected by the attorney-client privilege, attorney work product doctrine, or other privilege.

AFM will not respond further to this Interrogatory.

¹ See Declaration of Sarah Wirtz ("Wirtz Decl."), Ex. F.

² See *id.*, Ex. G.

**B. MGM’S REQUESTS FOR PRODUCTION OF DOCUMENTS
TO AFM RE DISCIPLINE**

(1) MGM’s Request for Production No. 38³

All DOCUMENTS referring or relating to any considered, proposed or actual action, proceedings, or discipline by the AFM with respect to any MUSICIAN, including but not limited to, any investigation, penalty, warning, suspension, probation, censure or fine. [“MUSICIAN” is limited to “any PERSON who YOU contend provided services of the type covered under the AGREEMENT on BEN HUR.”]

AFM’s Response to Request for Production No. 38:⁴

AFM objects to the Request on the grounds that, by propounding the request, Defendants and their counsel have engaged in unlawful, unfair labor practices in violation of the National Labor Relations Act. *United Nurses Ass’ns of Cal./Union of Health Care Professionals, NUHHCE, AFSCME v. NLRB*, 871 F.3d 767, 785-88 (9th Cir. 2017).

AFM objects to the Request to the extent it calls for production of documents protected by the attorney-client privilege or the attorney work product doctrine.

AFM objects to the Request to the extent it calls for production of documents privileged from disclosure under Section 7 of the National Labor Relations Act, 29 U.S.C. § 157.

AFM objects to the Request on the grounds that it is intended for the purpose of harassment.

AFM objects to the Request on the grounds that it seeks information that is not relevant to the claims made in this case.

³ See *id.*, Ex. H.

⁴ See *id.*, Ex. I.

1 Subject to and without waiving the foregoing objections, AFM responds as
2 follows: AFM will not further respond to this Request.

3 **(2) MGM's Request for Production No. 39⁵**

4 All DOCUMENTS referring or relating to any allegation by YOU that any
5 MUSICIAN violated any provision of the AFM by-laws or other AFM agreement,
6 policy, procedure, or rule. ["MUSICIAN" is limited to "any PERSON who YOU
7 contend provided services of the type covered under the AGREEMENT on BEN
8 HUR."]

9 **AFM's Response to Request for Production No. 39:⁶**

10 AFM objects to the Request on the grounds that, by propounding the
11 request, Defendants and their counsel have engaged in unlawful, unfair labor
12 practices in violation of the National Labor Relations Act. *United Nurses Ass'ns of*
13 *Cal./Union of Health Care Professionals, NUHHCE, AFSCME v. NLRB*, 871 F.3d
14 767, 785-88 (9th Cir. 2017).

15 AFM objects to the Request to the extent it calls for production of
16 documents protected by the attorney-client privilege or the attorney work product
17 doctrine.

18 AFM objects to the Request to the extent it calls for production of
19 documents privileged from disclosure under Section 7 of the National Labor
20 Relations Act, 29 U.S.C. § 157.

21 AFM objects to the Request on the grounds that it is intended for the
22 purpose of harassment.

23 AFM objects to the Request on the grounds that it seeks information that is
24 not relevant to the claims made in this case.

25 Subject to and without waiving the foregoing objections, AFM responds as
26 follows: AFM will not further respond to this Request.

27 _____
⁵ See *id.*, Ex. H.

28 ⁶ See *id.*, Ex. I.

1 **(3) MGM’s Request for Production No. 40⁷**

2 All agreements, policies, procedures, rules or by-laws that you allege were
3 violated by any MUSICIAN. [“MUSICIAN” is limited to “any PERSON who
4 YOU contend provided services of the type covered under the AGREEMENT on
5 BEN HUR.”]

6 **AFM’s Response to Request for Production No. 40:⁸**

7 AFM objects to the Request on the grounds that, by propounding the
8 request, Defendants and their counsel have engaged in unlawful, unfair labor
9 practices in violation of the National Labor Relations Act. *United Nurses Ass’ns of*
10 *Cal./Union of Health Care Professionals, NUHHCE, AFSCME v. NLRB*, 871 F.3d
11 767, 785-88 (9th Cir. 2017).

12 AFM objects to the Request to the extent it calls for production of
13 documents protected by the attorney-client privilege or the attorney work product
14 doctrine.

15 AFM objects to the Request to the extent it calls for production of
16 documents privileged from disclosure under Section 7 of the National Labor
17 Relations Act, 29 U.S.C. § 157.

18 AFM objects to the Request on the grounds that it is intended for the
19 purpose of harassment.

20 AFM objects to the Request on the grounds that it seeks information that is
21 not relevant to the claims made in this case.

22 Subject to and without waiving the foregoing objections, AFM responds as
23 follows: AFM will not further respond to this Request.

24
25
26
27 _____
⁷ See *id.*, Ex. H.

28 ⁸ See *id.*, Ex. I.

C. DEFENDANTS' FRCP 30(b)(6) DEPOSITION NOTICE TO AFM

(1) Matters of Examination 21-22⁹

21. Any complaint or disciplinary action or proceedings initiated by YOU against any person for work performed in connection with the scoring of BEN HUR.

22. Any considered or proposed disciplinary action or proceedings by YOU against any person for work performed in connection with the scoring of BEN HUR..

AFM's Response to Matters of Examination 21-22:

[By informal email from AFM's counsel:]¹⁰ [AFM] is unable to present a witness on most all matters of examination identified in the notice.

[By letter from AFM's counsel after the parties meet and conferred:]¹¹ With respect to Matters for Examination [21-22], AFM objects on the grounds of overbreadth, irrelevance, and because they call for disclosure of confidential union activity and communications. *United Nurses Ass'ns of Cal.*, 871 F.3d at 785-88. AFM will not designate a witness to testify on these Matters.

D. RAYMOND HAIR 1/23/2018 DEPOSITION TESTIMONY¹²

(1) Questions Witness Instructed Not To Answer On Grounds Of "Confidential Section 7 Union Activity"

20:13-20:23:

Q. Do you have any duties relative to the discipline of federation members?

⁹ See *id.*, Ex. E.

¹⁰ See *id.*, Ex. N.

¹¹ See *id.*, Ex. P.

¹² See *id.*, Ex. Q.

1 Ms. Garner: Objection. Attorney-client privilege and confidential union
2 activity.

3 The Witness: Do I answer it or not?

4 Ms. Garner: Don't answer.

5 Mr. Levin: Okay. Can we stipulate, counsel, that if you're raising privilege,
6 that the witness is going to refuse to answer at your direction?

7 Ms. Garner: So stipulated.

8 **20:25-21:7:**

9 **Q. What are your duties relative to the discipline of federation**
10 **members?**

11 Ms. Garner: Objection. Same objection. Instructing the witness not to
12 answer.

13 By Mr. Levin:

14 **Q. For how long have you held duties relative to the discipline of**
15 **federation members?**

16 Ms. Garner: Same objection.

17 **49:12-50:7:**

18 **Q. Do you know whether any of the musicians who worked on the score**
19 **have communicated to the AFM that it is not authorized to seek recovery on**
20 **their behalf?**

21 A. I --

22 Ms. Garner: Objection.

23 The Witness: I don't.

24 Ms. Garner: Objection. Don't answer.

25 The Witness: Okay.

26 Ms. Garner: On the basis of confidential Section 7 activity.

27 By Mr. Levin:

28

1 **Q. Have any of the musicians who worked on the score communicated**
2 **to the AFM that they do not support the AFM's lawsuit?**

3 Ms. Garner: Objection. Same objection. Confidential Section 7 activity.

4 Mr. Levin: Are you instructing him not to answer?

5 Ms. Garner: I'm instructing him not to answer, yes.

6 **130:3-14:**

7 Q. Are you aware of someone named Mark Graham?

8 A. Yes.

9 Q. Do you understand that he is somehow affiliated with a company called
10 Belvedere Music?

11 A. I did not know.

12 **Q. Is Mark Graham a member of the AFM?**

13 Ms. Garner: Objection. Don't answer. Objection. Section 7 protected
14 union activity. I'm instructing the witness not to answer.

15 **132:6-134:7:**

16 **Q. Now, are you aware that he [Mark Graham] was fined for his work**
17 **on Ben Hur?**

18 A. Yes.

19 **Q. And what do you know about that?**

20 Ms. Garner: Objection. Don't answer.

21 Mr. Levin: What's the basis for you directing him not to answer?

22 Ms. Garner: Section 7, protected union activity.

23 By Mr. Levin:

24 **Q. When was Mr. Graham first notified of the possibility that he would**
25 **be disciplined for his work on Ben Hur?**

26 A. I don't know.

27 Ms. Garner: Objection. Same -- same objection.

28 By Mr. Levin:

1 **Q. How much was Mr. Graham fined?**

2 Ms. Garner: Objection. Same objection.

3 By Mr. Levin:

4 **Q. What was the basis for determining the size of the fine against Mr.**
5 **Graham?**

6 Ms. Garner: Objection. Section 7, union activity.

7 Mr. Levin: Right. Just to be clear, when you're objecting based on the
8 National Labor Relations Act, you're also directing him not to answer; correct?

9 Ms. Garner: Correct.

10 Mr. Levin: And he is refusing to answer at your direction; correct?

11 Ms. Garner: Correct.

12 Mr. Levin: And you've stipulated to that; correct.

13 Ms. Garner: correct.

14 By Mr. Levin:

15 **Q. Was the entire amount of the fine issued against Mr. Graham**
16 **collected from him?**

17 Ms. Garner: Objection. Same objection.

18 By Mr. Levin:

19 **Q. Was some portion of the fine against Mr. Graham being held in**
20 **abeyance?**

21 Ms. Garner: Same objection.

22 Mr. Levin: And same direction to him?

23 Ms. Garner: Same direction.

24 By Mr. Levin:

25 **Q. Did the AFM agree that if Mr. Graham engaged in certain conduct**
26 **or comported his behavior in a certain way, that it would waive a portion of**
27 **the fine?**

28 Ms. Garner: Same objection.

134:18-137:14:

Q. Who made the decision to fine Mr. Graham?

Ms. Garner: Objection. Section 7, union activity. Don't answer.

By Mr. Levin:

Q. Who made the decision to hold in abeyance a part of the fine against Mr. Graham?

Ms. Garner: Same objection

Mr. Levin: Same direction?

Ms. Garner: Same direction.

By Mr. Levin:

Q. Did you personally participate in the decision either to fine Mr. Graham or to hold part of the fine in abeyance?

Ms. Garner: Same objection. Same direction.

By Mr. Levin:

Q. Now, Mr. Graham was fined under Article 15, Section 1(a) of the bylaws; correct?

Ms. Garner: Same objection. Same direction.

By Mr. Levin:

Q. Can you please explain why it was that Mr. Graham was fined under Article Section -- strike that. Can you please explain why it was that Mr. Graham was find under Article 15, Section 1(a) of the bylaws?

Ms. Garner: Same objection. Same direction.

By Mr. Levin:

Q. Where in the bylaws does it state the dollar range of the fine that could have been levied against Mr. Graham?

Ms. Garner: Objection. The bylaws speak for themselves. And in addition, I object to the extent that it calls for confidential Section 7 privileged information.

1 Mr. Levin: Are you directing him not to answer where it states in the
2 bylaws the fine? Are you directing him not to answer?

3 Ms. Garner: Yes.

4 By Mr. Levin:

5 **Q. Where in the bylaws does it state that some of a fine can be held in**
6 **abeyance?**

7 Ms. Garner: Same objection.

8 Mr. Levin: Same direction?

9 Ms. Garner: Same direction.

10 By Mr. Levin:

11 **Q. Other than Mr. Graham, has the union disciplined any other Ben**
12 **Hur musician?**

13 Ms. Garner: Same objection. Same direction.

14 By Mr. Levin:

15 **Q. Has the union communicated to any musician who worked on the**
16 **score of Ben Hur that it was considering disciplining them?**

17 Ms. Garner: Same objection. Same direction.

18 By Mr. Levin:

19 **Q. Has the union threatened any of the musicians who worked on Ben**
20 **Hur that if they do not cooperate with the union, they will receive a fine?**

21 Ms. Garner: Same objection. Same direction.

22 By Mr. Levin:

23 **Q. Has the union threatened any of the musicians who worked on Ben**
24 **Hur that if they don't testify in a particular fashion in this case, that they will**
25 **face discipline?**

26 Ms. Garner: I object to the -- same objection. Same direction.
27
28

1 **II. MGM’S INTERROGATORIES TO AFM RE AFM’S CONTENTIONS**

2 **A. MGM’S Interrogatory No. 4¹³**

3 IDENTIFY all facts supporting YOUR contention, if any, that MGM
4 participated in or was involved with decisions regarding the scoring of BEN HUR.

5 **AFM’s Response to Interrogatory No. 4:¹⁴**

6 AFM objects to this Interrogatory on the grounds that the terms “participated
7 in,” “involved with,” and “decisions regarding” are vague and ambiguous.

8 AFM objects to this Interrogatory on the grounds that it seeks information
9 that is irrelevant to the claims made in this case.

10 AFM objects to this Interrogatory to the extent it calls for information that is
11 more easily, uniquely, or equally available to MGM, and thus imposes an undue
12 burden on AFM.

13 AFM objects to this Interrogatory, consistent with Fed. R. Civ. P. 33(a)(2),
14 to the extent it seeks “all facts” at this time, when discovery in this case has not
15 been completed and AFM’s investigation is continuing. AFM reserves the right to
16 supplement its answer to this Interrogatory as it obtains additional facts through the
17 discovery process and further investigation.

18 AFM objects to this Interrogatory to the extent it calls for information
19 disclosed in this action pursuant to a designation as “HIGHLY CONFIDENTIAL–
20 ATTORNEYS’ EYES ONLY” under the parties’ Stipulated Protective Order.

21 AFM objects to this Interrogatory to the extent it calls for information
22 protected by the attorney-client privilege, attorney work product doctrine, or other
23 privilege.

24 Subject to and without waiving its objections, AFM answers as follows:

25 AFM states that MGM, by and through its wholly-owned subsidiary BH
26 PRODUCTIONS, is a producer of BEN HUR subject to the terms of the

27 ¹³ See *id.*, Ex. F.

28 ¹⁴ See *id.*, Ex. G.

1 Agreement, including the conditions and limitations imposed on a producer's right
 2 to subcontract work in covered job classifications to a subcontractor. Whether
 3 MGM "participated in or was involved with decisions regarding the scoring of
 4 BEN HUR" is irrelevant to its obligation to ensure compliance with the minimum
 5 compensation provisions of the Agreement when work otherwise covered by the
 6 Agreement is subcontracted to a subcontractor. MGM, by and through BH
 7 PRODUCTIONS, executed the composer agreement that provided for the
 8 engagement of musicians for scoring. AFM does not concede or contend that
 9 MGM's direct participation or involvement in the scoring is relevant or material to
 10 its claims in this case.

11 AFM does not intend this answer to be, nor should this answer be construed
 12 as, a complete and final answer to Defendant's Interrogatory No. 4. AFM
 13 anticipates obtaining additional facts supporting its claim through the discovery
 14 process and AFM's continuing investigation. AFM will supplement this answer to
 15 the extent required by Rule 26(e)(1) of the Federal Rules of Civil Procedure.

16 **B. MGM's Interrogatory No. 5¹⁵**

17 IDENTIFY all facts supporting YOUR contention, if any, that BH
 18 PRODUCTIONS participated in or was involved with decisions regarding the
 19 scoring of BEN HUR.

20 **AFM's Response to Interrogatory No. 5:¹⁶**

21 AFM objects to this Interrogatory on the grounds that the terms "participated
 22 in," "involved with," and "decisions regarding" are vague and ambiguous.

23 AFM objects to this Interrogatory on the grounds that it seeks information
 24 that is irrelevant to the claims made in this case.

25
 26
 27 _____
 28 ¹⁵ See *id.*, Ex. F.

¹⁶ See *id.*, Ex. G.

1 AFM objects to this Interrogatory to the extent it calls for information that is
 2 more easily, uniquely, or equally available to MGM and/or BH PRODUCTIONS,
 3 and thus imposes an undue burden on AFM.

4 AFM objects to this Interrogatory, consistent with Fed. R. Civ. P. 33(a)(2),
 5 to the extent it seeks “all facts” at this time, when discovery in this case has not
 6 been completed and AFM’s investigation is continuing. AFM reserves the right to
 7 supplement its answer to Interrogatory No. 4 as it obtains additional facts through
 8 the discovery process and further investigation.

9 AFM objects to this Interrogatory to the extent it calls for information
 10 disclosed in this action pursuant to a designation as “HIGHLY CONFIDENTIAL—
 11 ATTORNEYS’ EYES ONLY” under the parties’ Stipulated Protective Order.

12 AFM objects to this Interrogatory to the extent it calls for information
 13 protected by the attorney-client privilege, attorney work product doctrine, or other
 14 privilege.

15 Subject to and without waiving its objections, AFM answers as follows:

16 AFM alleges that MGM, by and through its wholly-owned subsidiary BH
 17 PRODUCTIONS, is a producer of BEN HUR subject to the terms of the
 18 Agreement, including the conditions and limitations imposed on a producer’s right
 19 to subcontract work in covered job classifications to a subcontractor. Whether BH
 20 PRODUCTIONS “participated in or was involved with decisions regarding the
 21 scoring of BEN HUR” is irrelevant to Defendants’ obligation to ensure compliance
 22 with the minimum compensation provisions of the Agreement when work
 23 otherwise covered by the Agreement is subcontracted to a subcontractor. BH
 24 PRODUCTIONS, on behalf of MGM, executed the composer agreement that
 25 provided for the engagement of musicians for scoring. AFM does not concede or
 26 contend that BH PRODUCTIONS’S direct participation or involvement in the
 27 scoring is relevant or material to its claims in this case.

28

1 AFM does not intend this answer to be, nor should this answer be construed
 2 as, a complete and final answer to Defendant's Interrogatory No. 5. AFM
 3 anticipates obtaining additional facts supporting its claim through the discovery
 4 process and AFM's continuing investigation. AFM will supplement this answer to
 5 the extent required by Rule 26(e)(1) of the Federal Rules of Civil Procedure.

6 **C. MGM's Interrogatory No. 7¹⁷**

7 IDENTIFY all facts supporting YOUR contention, if any, that MGM
 8 employed any individuals who worked on the score of BEN HUR.

9 **AFM's Response to Interrogatory No. 7:¹⁸**

10 AFM objects to this Interrogatory on the grounds that the term "employed"
 11 is vague and ambiguous.

12 AFM objects to this Interrogatory to the extent the phrase "MGM employed
 13 any individuals" seeks a legal conclusion.

14 AFM objects to this Interrogatory on the grounds that the phrase "any
 15 individuals who worked on the score of BEN HUR" is overly broad and goes
 16 beyond the scope of the claims and allegations made in the COMPLAINT.

17 AFM objects to this Interrogatory on the grounds that it seeks information
 18 that is irrelevant to the claims made in this case.

19 AFM objects to this Interrogatory to the extent it calls for information that is
 20 more easily, uniquely, or equally available to MGM, and thus imposes an undue
 21 burden on AFM.

22 AFM objects to this Interrogatory, consistent with Fed. R. Civ. P. 33(a)(2),
 23 to the extent it seeks "all facts" at this time, when discovery in this case has not
 24 been completed and AFM's investigation is continuing. AFM reserves the right to
 25 supplement its answer to this Interrogatory as it obtains additional facts through the
 26 discovery process and further investigation.

27 ¹⁷ See *id.*, Ex. F.

28 ¹⁸ See *id.*, Ex. G.

1 AFM objects to this Interrogatory to the extent it calls for information
2 disclosed in this action pursuant to a designation as “HIGHLY CONFIDENTIAL–
3 ATTORNEYS’ EYES ONLY” under the parties’ Stipulated Protective Order.

4 AFM objects to this Interrogatory to the extent it calls for information
5 protected by the attorney-client privilege, attorney work product doctrine, or other
6 privilege.

7 Subject to and without waiving its objections, AFM answers as follows:

8 AFM alleges that MGM is a producer of BEN HUR subject to the terms of
9 the Agreement, including the conditions and limitations imposed on a producer’s
10 right to subcontract work in covered job classifications to a subcontractor.
11 Whether MGM “employed any individuals who worked on the score of BEN
12 HUR” is irrelevant to its obligation to ensure compliance with the minimum
13 compensation provisions of the Agreement when work otherwise covered by the
14 Agreement is subcontracted to a subcontractor. MGM’s wholly-owned subsidiary
15 BH PRODUCTIONS, on behalf of MGM, executed the composer agreement that
16 provided for the engagement of musicians for scoring BEN HUR. AFM does not
17 contend or concede that MGM’s direct employment of any individual is material to
18 its claims in this case.

19 AFM does not intend this answer to be, nor should this answer be construed
20 as, a complete and final answer to Defendant’s Interrogatory No. 7. AFM
21 anticipates obtaining additional facts supporting its claims through the discovery
22 process and AFM’s continuing investigation. AFM will supplement this answer to
23 the extent required by Rule 26(e)(1) of the Federal Rules of Civil Procedure.

24

25

26

27

28

D. MGM's Interrogatory No. 8¹⁹

IDENTIFY all facts supporting YOUR contention, if any, that BH PRODUCTIONS employed any individuals who worked on the score of BEN HUR.

AFM's Response to Interrogatory No. 8:²⁰

AFM objects to this Interrogatory on the grounds that the term "employed" is vague and ambiguous.

AFM objects to this Interrogatory to the extent the phrase "BH PRODUCTIONS employed" seeks a legal conclusion.

AFM objects to this Interrogatory on the grounds that the phrase "any individuals who worked on the score of BEN HUR" is overly broad and goes beyond the scope of the claims and allegations made in the COMPLAINT.

AFM objects to this Interrogatory on the grounds that it seeks information that is irrelevant to the claims made in this case.

AFM objects to this Interrogatory to the extent it calls for information that is more easily, uniquely, or equally available to MGM and/or BH PRODUCTIONS, and thus imposes an undue burden on AFM.

AFM objects to this Interrogatory, consistent with Fed. R. Civ. P. 33(a)(2), to the extent it seeks "all facts" at this time, when discovery in this case has not been completed and AFM's investigation is continuing. AFM reserves the right to supplement its answer to this Interrogatory as it obtains additional facts through the discovery process and further investigation.

AFM objects to this Interrogatory to the extent it calls for information disclosed in this action pursuant to a designation as "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" under the parties' Stipulated Protective Order.

¹⁹ See *id.*, Ex. F.

²⁰ See *id.*, Ex. G.

1 AFM objects to this Interrogatory to the extent it calls for information
2 protected by the attorney-client privilege, attorney work product doctrine, or other
3 privilege.

4 Subject to and without waiving its objections, AFM answers as follows:

5 AFM states that MGM, by and through its wholly-owned subsidiary BH
6 PRODUCTIONS, is a producer of BEN HUR subject to the terms of the
7 Agreement, including the conditions and limitations imposed on a producer's right
8 to subcontract work in covered job classifications to a subcontractor. Whether BH
9 PRODUCTIONS "employed any individuals who worked on the score of BEN
10 HUR" is irrelevant to Defendants' obligation to ensure compliance with the
11 minimum compensation provisions of the Agreement when work otherwise
12 covered by the Agreement is subcontracted to a subcontractor. BH
13 PRODUCTIONS, on behalf of MGM, executed the composer agreement that
14 provided, directly or indirectly, for the engagement of musicians for scoring BEN
15 HUR. AFM does not contend or concede that BH PRODUCTIONS'S direct
16 employment of any individual is material to its claims in this case.

17 AFM does not intend this answer to be, nor should this answer be construed
18 as, a complete and final answer to Defendant's Interrogatory No. 8. AFM
19 anticipates obtaining additional facts supporting its claims through the discovery
20 process and AFM's continuing investigation. AFM will supplement this answer to
21 the extent required by Rule 26(e)(1) of the Federal Rules of Civil Procedure.

1 **III. PARAMOUNT’S INTERROGATORIES TO AFM RE AFM’S**
 2 **CONTENTIONS**

3 **A. Paramount’s Interrogatory No. 3²¹**

4 IDENTIFY all facts supporting YOUR contention, if any, that
 5 PARAMOUNT participated in or was involved with decisions regarding the
 6 scoring of BEN HUR.

7 **AFM’s Response to Interrogatory No. 3:²²**

8 AFM objects to Defendant’s Interrogatory No. 3 on the grounds that the
 9 terms “participated in,” “involved with,” and “decisions regarding” are vague,
 10 ambiguous, overly broad, and/or irrelevant to the claims made in this case. AFM
 11 further objects to the interrogatory to the extent it calls for information that is more
 12 easily or uniquely available to Paramount, and thus imposes an undue burden on
 13 AFM. AFM further objects, consistent with Fed. R. Civ. P. 33(a)(2), to the extent
 14 the interrogatory seeks “all facts” at this time, when discovery in this case has not
 15 been completed and AFM’s investigation is continuing. AFM further objects to
 16 the extent the interrogatory calls for information disclosed in this action pursuant
 17 to a designation as “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY”
 18 under the parties’ Stipulated Protective Order. AFM further objects to the extent
 19 the interrogatory calls for information protected by the attorney-client privilege,
 20 attorney work product doctrine, or other privilege. AFM reserves the right to
 21 supplement its answer to Interrogatory No. 3 as it obtains additional facts through
 22 the discovery process and further investigation. Subject to and without waiving its
 23 objections, AFM answers as follows:

24 AFM alleges that Paramount is a producer of BEN HUR subject to the terms
 25 of the Agreement, including the conditions and limitations imposed on a
 26 producer’s right to subcontract work in covered job classifications to a

27 ²¹ See *id.*, Ex. J.

28 ²² See *id.*, Ex. K.

1 subcontractor. Whether Paramount “participated in or was involved with decisions
2 regarding the scoring of BEN HUR” is irrelevant to its obligation to ensure
3 compliance with the minimum compensation provisions of the Agreement when
4 work otherwise covered by the Agreement is subcontracted to a subcontractor.

5 AFM further answers that it is engaged in ongoing discovery and
6 investigation of Paramount’s participation in the decisions regarding BEN HUR.

7 AFM does not intend this answer to be, nor should this answer be construed
8 as, a complete and final answer to Defendant’s Interrogatory No. 3. AFM
9 anticipates obtaining additional facts supporting its claim through the discovery
10 process and AFM’s continuing investigation. AFM will supplement this answer to
11 the extent required by Rule 26(e)(1) of the Federal Rules of Civil Procedure.

12 **B. Paramount’s Interrogatory No. 5²³**

13 IDENTIFY all facts supporting YOUR contention, if any, that
14 PARAMOUNT employed any individuals who worked on the score of BEN HUR.

15 **AFM’s Response to Interrogatory No. 5²⁴**

16 AFM objects to Defendant’s Interrogatory No. 5 on the grounds that it is
17 irrelevant to the claims in this action and is therefore unduly burdensome. AFM
18 further objects to the extent the interrogatory calls for information more easily or
19 uniquely available to Paramount. AFM further objects to the interrogatory on the
20 basis that the meaning of “employed” is vague, ambiguous, and therefore
21 misleading. AFM further objects, consistent with Fed. R. Civ. P. 33(a)(2), to the
22 extent the interrogatory seeks “all facts” at this time, when discovery in this case
23 has not been completed and AFM’s investigation is continuing. AFM further
24 objects to the extent the interrogatory calls for information designated as
25 “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” under the parties’
26 Stipulated Protective Order. AFM further objects to the extent the interrogatory

27 _____
28 ²³ See *id.*, Ex. J.

²⁴ See *id.*, Ex. K.

1 calls for information protected by the attorney-client privilege, attorney work
 2 product doctrine, or other privilege. AFM reserves the right to supplement its
 3 answer to Interrogatory No. 5 as it obtains additional facts through the discovery
 4 process and further investigation. Subject to and without waiving its objections,
 5 AFM answers as follows:

6 AFM alleges that Paramount is a producer of BEN HUR subject to the terms
 7 of the Agreement, including the conditions and limitations imposed on a
 8 producer's right to subcontract work in covered job classifications to a
 9 subcontractor. AFM also alleges that this case involves the subcontracting of work
 10 in covered job classifications. Thus, whether or not Defendant "employed" any
 11 individuals who worked on the score of BEN HUR is irrelevant to its obligation to
 12 ensure compliance with the minimum compensation provisions of the Agreement
 13 when work in covered job classifications is subcontracted to a subcontractor.

14 AFM does not intend this answer to be, nor should this answer be construed
 15 as, a complete and final answer to Defendant's Interrogatory No. 5. AFM
 16 anticipates obtaining additional facts supporting its claim through the discovery
 17 process and AFM's continuing investigation. AFM will supplement this answer to
 18 the extent required by Rule 26(e)(1) of the Federal Rules of Civil Procedure.

19
 20 DATED: FEBRUARY 2, 2018

Respectfully submitted,

21 ADAM LEVIN
 22 SARAH WIRTZ
 MITCHELL SILBERBERG & KNUPP LLP

23 By: /s/Adam Levin
 24 Adam Levin
 25 Attorneys for Defendants
 26 Metro-Goldwyn-Mayer Pictures Inc. and
 27 Paramount Pictures Corporation
 28